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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of

RAINBOW BROADCASTING COMPANY

For Extension of Time  
to Construct

and

For Assignment of  
Construction Permit for  
Station WRBW(TV)  
Orlando, Florida

) GC Docket No. 95-172

) File Nos. BMPCT-910625KP

) BMPCT-910125KE

) BTGCT-911125KT

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To: The Honorable Joseph Chachkin  
Administrative Law Judge

RAINBOW BROADCASTING LIMITED  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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### SUMMARY

The hearing record demonstrates that Rainbow's prosecution of its fifth and sixth extensions of time to construct was fully consistent with the applicable Commission rules and policies, thus confirming the propriety of the Commission's action in granting Rainbow's pro forma transfer application and its fifth and sixth extension requests after full record exploration of the remand issues. The Findings and Conclusions of Rainbow Broadcasting Company on Issue 1, which Rainbow Broadcasting Limited adopts, demonstrate that the permittee did not intentionally violate the Commission's *ex parte* rules, mandating favorable resolution of that issue.

The Findings and Conclusions of Rainbow Broadcasting Limited demonstrate that Rainbow at all times kept the Commission fully, accurately, and timely informed about all reportable matters concerning its financing and construction and the effect thereon of the litigation involving use of its tower by Press, mandating favorable resolution of Issues 2 and 3. They also demonstrate that the Commission's allowance of an unencumbered two year post-review construction period under the facts of this case was dictated by Court and Commission precedent, both as a matter of waiver of Rule 73.2598(a) and because

Rainbow satisfied the requirements for extension under  
Rule 73.3534(b) .

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To: The Honorable Joseph Chachkin  
Administrative Law Judge

RAINBOW BROADCASTING LIMITED  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON ISSUES 2 - 4

PROPOSED FINDINGS OF FACT

The Parties.

1. Rainbow Broadcasting Limited (RBL) constructed and now operates UHF television station WRBL, Orlando, Florida. It succeeded to the construction permit of Rainbow Broadcasting Company (RBC), a general partnership of the same individuals who are RBL's general partners, by *pro forma* transfer, *Memorandum Opinion and Order*, 9 F.C.C. Rcd. 2839, released May 23, 1994. RBC, which no longer exists, was named in the caption of the *Memorandum*

*Opinion and Hearing Designation Order*, FCC 95-468, released November 22, 1995 (*Designation Order*), and was therefore required by the A.L.J. to enter an appearance, Tr. 18. RBC is separately represented from RBL, which was required to intervene in order to protect its permit. See *Memorandum Opinion and Order*, FCC 96M-31, released March 8, 1996; *Memorandum Opinion and Order*, FCC 96M-58, released April 3, 1996. Where there is no reason to distinguish between the original and successor entities, these Findings will refer to the permittee as Rainbow.

2. Press Broadcasting Company, Inc. (Press) is a market competitor which informally opposed the *pro forma* transfer from RBC to RBL and various extensions of time to construct Station WRBW and appealed their grant by the Commission, leading to the remand which gave rise to this hearing, *Press Broadcasting Company, Inc. v. F.C.C.*, 59 F.3d 1365 (D.C. Cir. 1995). It was made a party in the *Designation Order*, paragraph 11.

3. The Commission's Separate Trial Staff was designated by the Office of General Counsel to represent the Commission in the disinterested public interest role of the Hearing Division's Mass Media Bureau because the Bureau had recused itself from all participation after Press charged it with improper conduct. *Id.*

The Earlier Proceedings

4. RBC's 1982 application for construction permit for a new television station on UHF channel 65 in Orlando, Florida was finally granted by the Commission in October 1984, Stips. 1-2, and a construction permit for Station WRBW issued on April 22, 1986, Stip. 4.

5. Appellate review occupied some six years, including a Commission generated remand from the District of Columbia Circuit as part of a review of the agency's minority preference policy, and ended with Supreme Court affirmance of the RBC grant on June 27, 1990 and denial of rehearing of that action on August 30, 1990. Stips. 3, 5-7, 9-10.

6. Although RBC's construction permit did not become final-- i.e., no longer subject to administrative or judicial review-- until August 30, 1990, Stip. 11, the applicant was required to file four applications for extension of time to construct during the review period, Stip. 8. Thereafter two more applications for extensions of time were filed, the fifth on January 25, 1991, Stip. 13, and the sixth on June 25, 1991, Stip. 17.

7. Ten days after the Commission had granted the fifth extension on February 5, 1991, Stip. 14, Press filed an Informal Objection, Stip. 15. Learning of the

intervening grant, Press refiled that pleading as a Petition for Reconsideration, which was still pending when RBC filed the sixth extension request, to which Press filed an Informal Objection on July 10, 1991, Stip. 18. On November 29, 1991, RBC filed a pro forma application to transfer the CP to RBL, replacing debt with equity financing. Stip. 21. That fling too Press informally opposed.

8. On June 18, 1993, the Mass Media Bureau Staff granted Press' informal objections to the June 25, 1991 sixth extension request and vacated Rainbow's Construction Permit. Joint Exh. 8. On July 1, 1993, Rainbow met with the Bureau Staff, Stip. 26, and the next day filed a Petition for Reconsideration and Reinstatement and Grant of Application for Assignment of Construction Permit, Stip. 29. On July 30, 1993, the Staff reconsidered its earlier action, granted the transfer and gave Rainbow 8 months to construct. Joint Exh. 9.

9. Press appealed these actions to the Commission and on May 23, 1994, the Commission finally denied Press' various objections and granted Rainbow a twelve month additional period within which to construct. Stip. 30; Joint Exh. 10. Press' appeal of that action led to



remand from the District of Columbia Circuit for these further proceedings on July 21, 1995. Stip. 31.

The Designation Order.

10. In response to the Court's remand, which did not vacate the original agency Order granting the challenged Rainbow authorizations, the Commission "ordered [t]hat the Commission's Order, 9 F.C.C. Rcd. 2839 (1994), shall remain in effect and Rainbow may continue to operate until the hearing is concluded and all issues are finally resolved." *Designation Order*, paragraph 9.1/

11. Assigning Rainbow the burdens of proceeding and proof, *ibid.*, paragraph 12, the Commission designated the following issues necessitated by the remand<sup>2/</sup>:

(1) To determine whether Rainbow intentionally violated Sections 1.1208 and 1.1210 of the Commission's *ex parte* rules by soliciting a third party to call the Commission on Rainbow's behalf, and by meeting with Commission staff to discuss the merits of Rainbow's application proceedings.

(2) To determine whether Rainbow made misrepresentations of fact or was lacking in candor with respect to its financial qualifications regarding its

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1/ In light of this Commission ruling, the A.L.J. denied Press' February 12, 1996 "Petition For Order Requiring The Unwinding Of The Assignment Of The Construction Permit Of Station WRBW(TV)." *Memorandum Opinion and Order*, FCC 95M-29, released March 7, 1996.

2/ The Court's challenge to the Commission's refusal to consider construction efforts, *vel. non*, after expiration of Rainbow's construction permit was resolved in the *Designation Order*, paragraphs 2-6, and is not in issue here.

ability to construct and initially operate its station, in violation of Sections 1.17 and 73.1015 of the Commission's rules or otherwise.<sup>3/</sup>

(3) To determine whether Rainbow made misrepresentations of fact or was lacking in candor regarding the nature of the tower litigation in terms of its failure to construct in connection with its fifth and sixth extension applications, in violation of Sections 1.17 and 73.1015 of the Commission's rules or otherwise.

(4) To determine whether Rainbow has demonstrated that under the circumstances either grant of a waiver of Section 73.3598(a) or grant of an extension under Section 73.3534(b) is justified.

(5) To determine, in light of the evidence adduced pursuant to the foregoing, whether Rainbow is qualified to be a Commission licensee and whether grant of the subject applications serves the public interest, convenience and necessity.

*Ibid.*, paragraph 10; Erratum, Mimeo No. 61019, released December 15, 1995.

12. Issues 1-3 were designated without discussion "pursuant to the court's decision," *Designation Order*, paragraph 1. In the case of Issue 4, the Commission explained that it had originally calculated Rainbow's 24 month construction period from the conclusion of appellate review in August 1990 because it would be unreasonable to expect Rainbow to construct while its permit was at risk; however, the Court had remanded for agency

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<sup>3/</sup> Rule 1.17, 47 C.F.R. § 1.17, and Rule 73.1015, 47 C.F.R. § 73.1015, prohibit "misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission" in any kind of written statement submitted to the Commission by a permittee.

consideration of Rainbow's progress under Section 73.3534 because the "plain language" of Section 73.3598 requires construction within 24 months "from the date of issuance of the original construction permit." *Designation Order*, paragraph 7.

13. In putting in hearing the question whether the facts support grant of extension under the hardship provisions of Rule 73.3534, the Commission also mandated determination of the alternative question whether there is any factual basis to support a waiver of Section 73.3598. The Commission said that it "ordinarily would not designate an issue concerning extension periods," but that since a hearing would be held "in any event, we believe that a hearing on the extension issue may assist our resolution of the matter." *Id.*

This Proceeding.

14. Discovery was undertaken, including, under Issue 1, discovery against Mass Media Bureau personnel, although in the latter case, "[a]s the ALJ directed, the scope of such depositions" was "strictly limited to the substance of any communications between the Bureau's staff and Rainbow or its representatives concerning the applicability, and Rainbow's understanding of the applicability, of the *ex parte* rules to this proceeding" and

"exclude[d] questions concerning communications among Bureau personnel." *Memorandum Opinion and Order*, FCC 96-213, released May 13, 1996, paragraph 11. During the discovery phase of the proceeding, RBC filed a "Motion for Partial Summary Decision" seeking summary resolution of Issue 2, the financial misrepresentation issue. The motion was opposed by Press and the Separate Trial Staff and denied by *Memorandum Opinion and Order*, FCC 96M-96, released May 6, 1996. Discovery was completed on June 7, 1996. Rainbow's direct case Exhibits and the parties' Joint Exhibits, including stipulations of fact, were exchanged on June 11, 1996. Witness notification was made on June 18, 1996.

15. Hearing sessions were held on June 25-28 and July 11, 1996, when the record was closed, *Order*, FCC 96M-177, released July 16, 1996. Rainbow principal Joseph Rey offered testimony relevant to all issues. Additional witnesses on Issue 1 included Margot Polivy, Antoinette Cook Bush and, in rebuttal, Paul Gordon; Howard R. Conant offered testimony under Issue 2. In view of Margot Polivy's participation as a witness in the trial of Issue 1, these proposed Findings of Fact and Conclusions of Law are limited to Issues 2-4. RBL adopts the Findings and Conclusions of RBC on Issue 1.

Issue 2

16. Rainbow's fifth and sixth extension applications checked "YES" in response to Question 8: "Are the representations contained in the application for construction permit still true and correct?" Joint Exhibit 2, page 1; Joint Exh. 3, page 1. Issue 2 seeks to determine the veracity of that representation in the context of Rainbow's financial qualifications.

17. The Rainbow-Conant Relationship. At the time of the fifth and sixth extension applications, Rainbow relied for its financing on a loan from Chicago businessman Howard Conant, whom the Rainbow principals, Joseph Rey and Leticia Jaramillo, have known for over 15 years. Rainbow Exh. 4, page 1.

18. Conant and Rey were introduced in Chicago by a mutual friend in 1978 when Rey was national sales manager of Storer's Miami radio stations. Rainbow Exh. 4, page 1; Tr. 744. They met thereafter on Rey's business trips to Chicago, Rainbow Exh. 4, page 1, when Rey "would try to make a point to call [Conant] up or stop by his office or tr[y] to get a sandwich with him," Tr. 745. They met five or six times this way before Rey left Storer in January 1980. Tr. 744-745. While the meetings were social, they talked business, including the television industry and Conant's steel business. Tr. 782-783.

19. The two men continued to meet three or four times a year on the same basis in Rey's next job as general manager and national sales manager for two Miami radio stations. Tr. 745.

20. They first worked together professionally in connection with Station WDZL-TV, Miami. Rainbow Exh. 4, page 1; Tr. 651. Howard Conant was a 49 percent limited partner in 39 Broadcasting Company, licensee of WDZL-TV, for which he guaranteed the construction and operation financing. Rainbow Exh. 4, page 1; Tr. 746. He was associated with the WDZL project from its inception some two or three years before it went on the air until its sale in 1984. Tr. 701. Leticia Jaramillo's sister was the general partner of 39 Broadcasting Company and Joseph Rey was the station's Sales Manager/Station Manager. Rainbow Exh. 4, page 1.

21. Station WDZL went on the air in October 1982; Joseph Rey was employed by WDZL from August 1982 until the station's sale in June 1984. Tr. 747. Rey supervised some 20 of the station's 60 employees, Tr. 978. He was in charge of all sales at the station, acted as national sales manager and was involved in overall station operation, working closely with the general manager. Tr. 746. The station "was run by three of us, . . . the gen-

eral manager, the sales manager, and myself as vice president of sales." Tr. 978.

22. During the WDZL years Rey and Howard Conant met six or eight times a year, Tr. 747-747, both in Chicago and in Miami. Tr. 651, 747. They discussed the station's progress, sales and "everything concerning the operation of the station." Tr. 652. They "reviewed the sales side and the expense side in detail at least once a quarter" and for a time in 1983 they did so on a monthly basis. Tr. 979.

23. When Rey worked at Storer, Howard Conant became "well acquainted with his abilities," Rainbow Exh. 4, page 1, finding him "a very competent person." Tr. 666. "[H]e was articulate. He was bright. He comported himself well. He came across as an effective, convincing, knowledgeable executive." Tr. 666. The WDZL relationship provided "an additional basis for my confidence in Mr. Rey" because the station in which he held one of the three top jobs performed very well. Tr. 666.

24. Howard Conant considered himself "the logical person to approach" for Rainbow financing since he had financed the successful WDZL venture. Tr. 652. From Rainbow's point of view, Joseph Rey had become familiar with Howard Conant's financial status through the WDZL

relationship. Tr. 747. He saw the original FCC license application, to which Mr. Conant's financial statement was attached, and he worked throughout his tenure at WDZL with the bank loan agreement, which also included Conant's financial documents. Tr. 748. Rey learned from Howard Conant's financial statements that his net worth was in excess of \$10 million. Tr. 748-749.

25. Moreover, because an accident installing the first WDZL antenna initially forced the station to operate with drastically reduced power, throwing off all its projections, Mr. Rey had to work constantly with Continental Bank and the station's loan documents, including Howard Conant's financial documents. Tr. 784-785. Rey also knew that Mr. Conant owned Interstate Steel, a large Chicago steel company, had sold a family paint business, and had real estate holdings in addition to his interest in WDZL. Tr. 749.

26. The Conant Loan Commitment. Joseph Rey first approached Howard Conant about financing Rainbow "very late in 1983." Tr. 749. They agreed to the terms of the loan at a meeting in Conant's Chicago office in 1984 or 1985, after the sale of WDZL. Tr. 655-657, 700, 749, 785. As Howard Conant explained those terms:

I was to provide up to \$4 million in funds to build the station and operate for approximately one year.



My loan was to be paid back over a 5-year period in equal monthly installments at an interest rate of 2% over the prime rate as charged by the Continental Bank. In addition, I was to get 50% of any of the station's net cash flow for the first 5 years of operation, that amount to decrease to 25% after 5 years of operation. If the station were sold at any time during that period, I was to receive 10% of the net sales price. If the station was sold before 5 years of operating I was to have a security interest in the station's assets, subject only to any prior interest that might be held by the equipment supplier. I also was to have the personal guarantees of Joseph Rey and Leticia Jaramillo, both of whom orally agreed to the proposed arrangement.

Rainbow Exh. 4, page 2

27. Joseph Rey confirmed the terms as described by Howard Conant, Tr. 750-751, and added that the loan was to be junior to any equipment loan, Tr. 758, 901. He said the size of the loan, up to \$4 million, was based on Rainbow's "needs to construct and operate the station for approximately a year." Tr. 750, 898-899.

28. Conant was to be a lender to Rainbow and would not have an equity position in the station while it belonged to Rainbow. Tr. 653, 694. During Rainbow's ownership, Conant would be a shareholder in the sense that he "held shares of the positive cash flow and a share of the net sales proceeds," but would not be a partner or have a partner's share. Tr. 979. However, if Rainbow sold the station, Conant would gain a 10 percent equity interest in the station or its equivalent in cash. Tr. 694.

29. When the oral agreement was reached, the comparative hearing litigation was still in progress. Tr. 751. The agreement was to be reduced to writing when Howard Conant advanced the money, Tr. 695, which he would do when the permit was free and clear and it was time to commence construction. Tr. 758.

30. Howard Conant saw no need to put his commitment in writing before that time because of the satisfactory nature of his past business experiences and personal relationships with the Rainbow principals and the fact that "the nature of the agreement was basic enough" to make a writing unnecessary at that stage. Rainbow Exh. 4, page 2. Mr. Conant has on multiple other occasions entered into oral agreements involving significant amounts of money. Tr. 652-653.

31. From Rainbow's point of view, Joseph Rey saw no need to put the deal in writing in advance of the loan because he knew from Conant's past transactions that he is a "deal is a deal" person who "has done transactions on verbal and handshake that have been reduced to writing down the line and they were exactly as [on] the day they were orally made on a handshake." Tr. 938.

32. At the meeting at which the loan agreement was reached, Joseph Rey provided Howard Conant with documents

including audience projections, sales projections and expenses. Tr. 750. Conant said Rey "presented an analysis of how much money he would need to start the station, and a projection of income and ratings and so on; cash flow analysis projection; the germane numbers that would pertain to making an intelligent decision as to an investment." Tr. 653.

33. In requiring personal guarantees from both principals, Howard Conant's interest was not in their money. Tr. 654. He had never seen their financial statements, Tr. 654, 659, 664, but assumed they had come to him because they were unable to finance the station themselves, Tr. 654. He considered the principals' guarantees "a necessary component" of the deal as a demonstration of "their sincerity quite independent of whatever they were risking" because "they were putting at risk whatever assets they owned, which would be junior to me." Tr. 654. Conant said he wanted that demonstration "[t]hat they had faith in the project." Tr. 678.

34. Joseph Rey assumed that Howard Conant's requirement of personal guarantees, to which both Rey and Jaramillo consented, Tr. 752, was intended as a proof of their commitment:

Knowing Howard, it goes to commitment. . . . Howard is a trusting person. Trust is a big element of

friendship with Howard. . . . [H]e knew that I could not personally repay that money, but it goes to my commitment, and I'm going to break my tail to make sure that the project is as good as I can make it to be and that I am totally committed to it. It's a comfort level for him, I would say, within a friendship, or within a business transaction such as this one.

Tr. 751-752.

35. While Howard Conant did not in the end provide financing because of Rainbow's change to a limited partnership with equity financing, he testified that his oral financing "commitment remained constant throughout the 1991-1993 time period and beyond" and he "remained willing and able to finance the station pursuant to that agreement even to the present." Rainbow Exh. 4, page 1. Rey confirmed that "the commitment was always there."

Tr. 899.

36. Indeed, when Joseph Rey advised Conant in 1991 that Rainbow was considering changing to a limited partnership to get long term funding, Conant agreed to make his construction loan available on the same terms in the form of a bridge loan, if Rainbow needed it, Rainbow Exh. 4, page 2; Tr. 676-677, 786, except that it would be repaid after 90 days on air rather than over five years, Tr. 800-801, 900-901. The two men "talked about the fact that if [Rainbow] was a sixth station it was going to require more capital before the station broke even" and

"discussed . . . what [Conant] thought from a businessman's point of view [about] the idea of raising equity capital. He thought it was prudent and made sense in light of the present circumstances . . . ." Tr. 800.

37. Impact of Tower Dispute. Rainbow leased its antenna space in 1986 when its application was still in comparative litigation because it appeared necessary to preserve the site: Rainbow was led to believe by the tower owner that there were only two slots on the tower for television stations, each of which could only be occupied by one station-- one at 1400 feet and the one in which Rainbow was interested, at 1500 feet. Tr. 765. "They also represented that they were negotiating with other people, and that it was first come, first serve. And if I wanted the 1500 foot slot, I had better hurry up and sign the lease." Tr. 947.

38. In 1985, Rainbow had commissioned an analysis by the law firm of Wiley & Rein and had been advised that a contemplated channel swap between the existing noncommercial licensee of Channels 18 and Press, licensee of Channel 68, was dependent upon Press' use of the slot in which Rainbow was interested because 1500 feet was the absolute minimum height from which Press' Channel 18 operation would have any chance of putting the requisite

city grade signal over Clermont, Florida, its city of license. Tr. 765. Accordingly, in order to preserve its site, RBC was forced to rent it years in advance, Tr. 765, paying about half a million dollars in rent between the start of the lease in October 1986 and transfer of the construction permit to RBL in 1993. Tr. 947.

39. On two subsequent occasions, once in 1988 and again in 1989, a representative of the tower owner sought and was denied Rainbow's permission to lease space to Press within Rainbow's exclusive 1500 foot aperture. Tr. 766. In the late 1980's, Rainbow sought a legal opinion from Florida counsel concerning Press' use of Rainbow's antenna slot but was told that no action could be taken "until there was a specific action on behalf of the landlord regarding duplicating our space." Tr. 766-767. In August of 1990, however, Rainbow was told by the landlord's representative "that the landlord was intending to sign a lease" with Press "for a space that was duplicate to the one [Rainbow] had leased in 1986." Tr. 766. The matter eventuated in Rainbow's filing of its November 1990 suit against the tower owner to preserve exclusive use of the 1500 foot tower slot. Press Exh. 9.

40. In a late 1990 meeting at Howard Conant's Chicago office, Joseph Rey reported these developments. As

Rey recalled the meeting, he told Mr. Conant "that there had been a lawsuit filed; that there was a competitor that was attempting to move its transmitter site to our transmitting site; and that I was very concerned that . . . RBC's value could be nil." Tr. 752-753. Conant said Rey told him "that the project had, in his opinion, become riskier because of a dispute over tower space and the possibility that there would be an additional television signal in the market." Rainbow Exh. 4, page 1. Conant said that at the same meeting Rey "also questioned whether or not it would be advisable to seek a form of equity financing, rather than to rely upon financing through me, especially during a time of national economic downturn." *Id.*

41. Conant said that "Joe . . . was a little disappointed with the prospect of litigation. He didn't like the idea of having a delay to the beginning of the operation of the station" and "also didn't like the idea that there might be six stations instead of five." Tr. 683. Conant, however, "felt that it was appropriate to wait and see what develops because I wasn't as negative as he was, and I thought that, number one, that the television broadcasting business probably would improve, and that having six stations in a given area is not as good

as having five, but it didn't sound like it was such a serious negative to me." Tr. 683-684, 687, 690.

42. Accordingly, any concern that Conant felt simply reflected that of his "advisor", Joseph Rey. Tr. 687. Conant himself did not think "it was a bad deal," Tr. 687, and there was no "change in our agreement to go forward," Rainbow Exh. 4, page 1. Conant was "ready to finance this station," Tr. 690, without regard to whether the litigation was concluded, what its outcome was, or the economic effects of being a sixth station, Tr. 683-684, 688, 703. Whenever Rey cleared up "whatever matters that he had to clear up, and he could proceed to build the station," Conant remained "delighted to invest in it. And I was hopeful that it would be as successful as my investment in WDZL, which was a very good one." Tr. 691.

43. While Conant understood at the time of the meeting that Rainbow could not proceed with station construction until "they resolved whatever legal problems they had," Tr. 692, he had no independent knowledge of the applicable legal requirements to get the station fully authorized and was not familiar with or involved in the suit, Tr. 671, 690, which concerned him only if it "impaired the award of the construction permit or the



final authority to build the station," Tr. 685, 692, because his commitment was to finance the station only "when they had complete authorization to proceed to go ahead with the station." Tr. 669. Conant "didn't want to get involved with any of the lawsuits," whether involving the license or the tower, Tr. 669-670, but he was prepared to finance the station whenever Rainbow said they "had the full authority to proceed to build it." Tr. 684-685, 671, 691-693, 695-696. He "would rely on [Rey's] word" that Rainbow was free to construct, Tr. 703.

44. Rey's own pessimistic outlook was based on the view of the expert Rainbow had hired in the tower litigation that WRBW would be "valueless if it were to be the sixth station in the Orlando market at the time." Tr. 753. Moreover, "I also believed it. I mean, 1990 was the recession year. Advertising budgets projected for 1991 were already lower, were expected to be lower than 1990. [I]t was a very pessimistic outlook. And I concurred with it. I thought it was worthless if that were to happen." Tr. 753, 780, 989.

45. The fact that the new station that might relegate Rainbow to sixth station status would be an existing, established station made matters worse. Tr. 789-